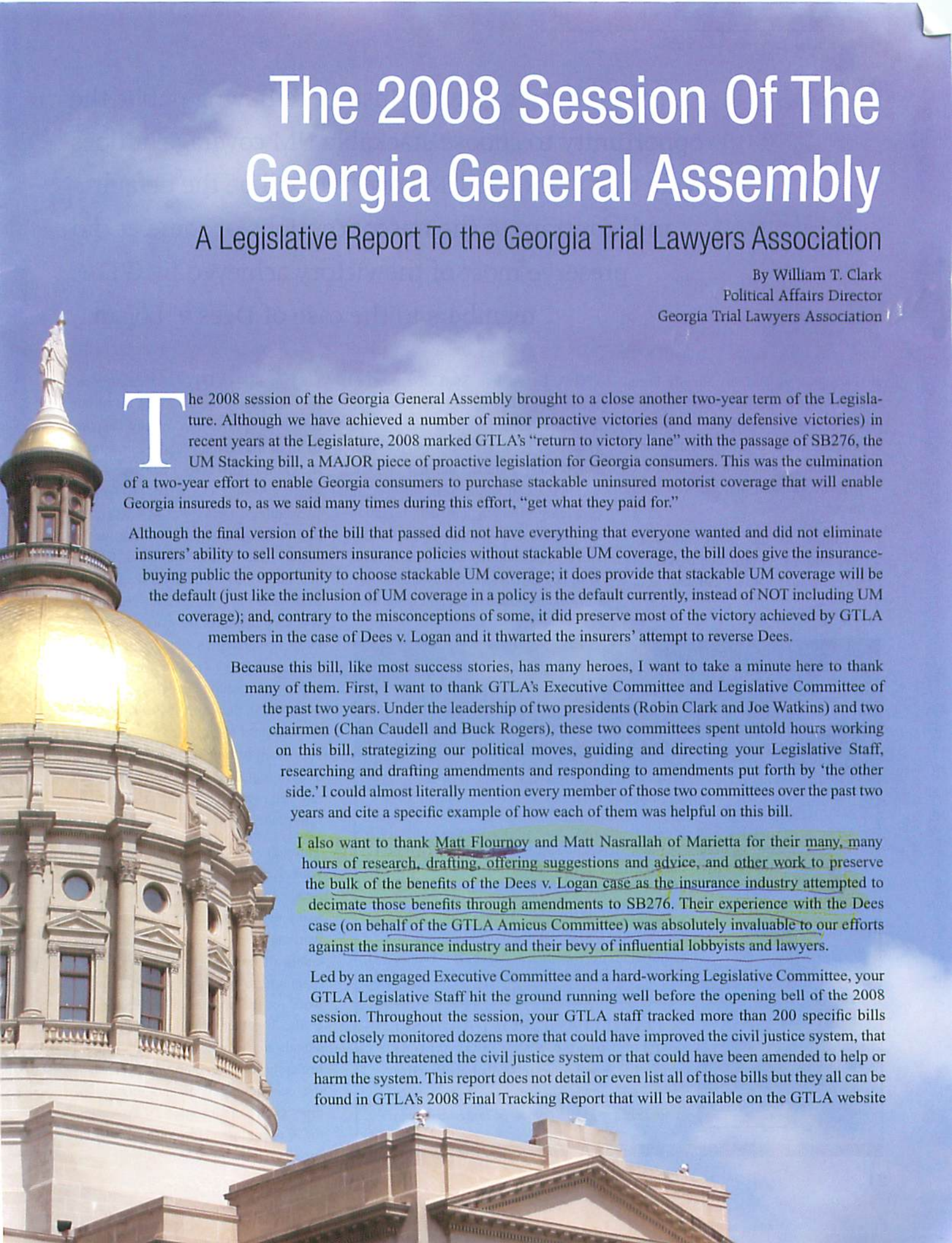


# The 2008 Session Of The Georgia General Assembly

## A Legislative Report To the Georgia Trial Lawyers Association

By William T. Clark  
Political Affairs Director  
Georgia Trial Lawyers Association



**T**he 2008 session of the Georgia General Assembly brought to a close another two-year term of the Legislature. Although we have achieved a number of minor proactive victories (and many defensive victories) in recent years at the Legislature, 2008 marked GTLA's "return to victory lane" with the passage of SB276, the UM Stacking bill, a MAJOR piece of proactive legislation for Georgia consumers. This was the culmination of a two-year effort to enable Georgia consumers to purchase stackable uninsured motorist coverage that will enable Georgia insureds to, as we said many times during this effort, "get what they paid for."

Although the final version of the bill that passed did not have everything that everyone wanted and did not eliminate insurers' ability to sell consumers insurance policies without stackable UM coverage, the bill does give the insurance-buying public the opportunity to choose stackable UM coverage; it does provide that stackable UM coverage will be the default (just like the inclusion of UM coverage in a policy is the default currently, instead of NOT including UM coverage); and, contrary to the misconceptions of some, it did preserve most of the victory achieved by GTLA members in the case of *Dees v. Logan* and it thwarted the insurers' attempt to reverse *Dees*.

Because this bill, like most success stories, has many heroes, I want to take a minute here to thank many of them. First, I want to thank GTLA's Executive Committee and Legislative Committee of the past two years. Under the leadership of two presidents (Robin Clark and Joe Watkins) and two chairmen (Chan Caudell and Buck Rogers), these two committees spent untold hours working on this bill, strategizing our political moves, guiding and directing your Legislative Staff, researching and drafting amendments and responding to amendments put forth by 'the other side.' I could almost literally mention every member of those two committees over the past two years and cite a specific example of how each of them was helpful on this bill.

I also want to thank Matt Flournoy and Matt Nasrallah of Marietta for their many, many hours of research, drafting, offering suggestions and advice, and other work to preserve the bulk of the benefits of the *Dees v. Logan* case as the insurance industry attempted to decimate those benefits through amendments to SB276. Their experience with the *Dees* case (on behalf of the GTLA Amicus Committee) was absolutely invaluable to our efforts against the insurance industry and their bevy of influential lobbyists and lawyers.

Led by an engaged Executive Committee and a hard-working Legislative Committee, your GTLA Legislative Staff hit the ground running well before the opening bell of the 2008 session. Throughout the session, your GTLA staff tracked more than 200 specific bills and closely monitored dozens more that could have improved the civil justice system, that could have threatened the civil justice system or that could have been amended to help or harm the system. This report does not detail or even list all of those bills but they all can be found in GTLA's 2008 Final Tracking Report that will be available on the GTLA website



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at [www.gtla.org](http://www.gtla.org) and has already been emailed to all members. Instead, this report covers the successes we had in improving the civil justice system and most of the numerous assaults on the civil justice system that we were able to thwart.

In addition to the many hours of service voluntarily provided by GTLA Leadership and many members, your

GTLA Legislative Staff also worked relentlessly throughout this session. We were thrilled to have Sue Saleska Hamilton back in action after a very tough 2007 summer and fall and she was her usual stellar self, once again providing strength and determination for the team, as well as her two decades worth of credibility and relationships with key legislators. Becky Bukant not only did her share of the lobbying work

(and more) as GTLA's Communications Director, she also kept all of our members apprised on a daily basis as to all of the comings and goings under the Gold Dome. And, when we needed media coverage as a part of our legislative strategy, Becky was able to garner that coverage and put it to work for the cause. Jim Collins was back for his second year as a part of our Legislative Staff and his Republican credibility was very useful as we worked with the GOP leadership in both chambers of the Legislature to pass and stop legislation as needed. Finally, our newest member of the team, Micah Gravley, worked hard all session, doing all that was asked of him and making sure the Team's logistical needs were met each day (all while becoming a new first-time-father in mid-session).

Through the concerted efforts of your Legislative Team, your GTLA Leadership and the efforts of many, many members, we were able to forge working relationships with the leadership of both political parties in this State and to put those relationships to work for the purpose of achieving our goals. Together, this team of professionals and volunteer members worked tirelessly to meet – on a daily basis – the overarching goal and mission of this great organization: “Protecting the Constitutional promise of justice for all ....”

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Now, onto the details of the 2008 session:

### **UM Stacking (SB 276)**

Desired Result: Pass UM stacking.

Status: Goal Achieved.

We passed SB276 mid-way through the session and Governor Perdue signed the bill into law. The primary achievement of this bill is that it allows consumers to purchase Stacking UM coverage ('stacking' term refers only to stacking of UM coverage on top of tortfeasor's liability coverage and has no impact on traditional inter-policy stacking of coverages on multiple cars under multiple policies). The bill also thwarted the insurance industry's attempt to reverse legislatively the case of *Dees v. Logan* regarding offsets by UM carriers. The industry attempted to secure legislatively the right to offset "any benefit received by an insured from any other source whatsoever." But, through GTLA's successful efforts to persuade House leadership of what a bad public policy that would represent, the insurance industry was permitted only to take offsets of Medpay benefits or workers' compensation benefits, but no other benefits such as life insurance benefits, health insurance benefits, disability benefits, etc. Finally, the bill also eliminates the bureaucratic regulation of insurance rates and allows the free market to regulate insurance premiums for all Georgians except for those who purchase only minimum limits coverage.

### **ER Immunity Repeal (SB286)**

Desired Result: Replace gross negligence standard with professional negligence standard.

Status: Goal Not Achieved.

Leadership of both chambers refused to allow this initiative to move forward this election year. This should be a high priority next year.

### **Guns in parking lots (HB 89)**

Desired Result: Minimize immunity provision.

Status: Goal Achieved.

This bill passed on the final night of the session with a wholly ineffective immunity provision, the only reasonable interpretation of which is that immunity for a property owner sued in connection with the use of a gun by an invitee or a licensee will apply only so long as the owner of the gun keeps the gun locked in his or her car. This was a truly bizarre bill with an even more bizarre political journey to passage. No harm done to the civil justice system with the final version of this bill.

### **Agritourism (SB272; SB449)**

Desired Result: Prevent passage.

Status: Goal Achieved.

After we successfully stopped previous versions of the bill in 2007, Governor Perdue offered SB449 as a part of his

administration's legislative agenda for 2008. After the Senate passed a slightly watered down version of the bill, the House Civil Judiciary Committee held one lengthy hearing where virtually every member of the committee criticized the bill, leading to its being tabled. The Governor's staff and legislators spent the final weeks of the session trying to find 'vehicles' onto which they could attach some version of the bill but we stopped them at every turn.

### **Deer Running Immunity**

Desired Result: Prevent passage.

Status: Primary goal not achieved but ...

On the final night of the session, the House passed a bill containing an amendment to immunize a property owner and a hunter if wildlife runs across the property owner's land while being hunted by the hunter and runs into an adjacent roadway and causes harm to a motorist. By the time the bill got to the Senate, we faced the choice of acquiescing to this amendment or having the bill become a vehicle for the entire agritourism immunity bill described above. Given the very limited impact of this amendment, we made the calculated decision to let the bill pass, rather than send it back to the House where the agritourism bill could have been added.



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### **Seatbelts – Making the failure to wear a seat-belt admissible (HB 872 & SB412)**

Desired Result: Prevent passage or minimize jury's ability to reduce damages.

Status: Goal Achieved.

We faced half a dozen bills with some version of this proposition and several other bills in the waning days of the session that could have become vehicles for this issue. We negotiated on one bill in the House Civil Judiciary Committee so as to allow the failure to wear a seatbelt to be admissible but severely limited a jury's ability to reduce the plaintiff's damages. But, the Chairman of the committee held the bill for us with no further hearings. None of these bills passed. So, the failure to wear a seatbelt is still inadmissible under Georgia law.

### **Product Liability limitations**

Desired Result: Prevent passage or limit language so as not to adversely impact any claim.

Status: Goal Achieved.

In the final 5 days of the session, lobbyists from Powell Goldstein, working on behalf of a front group for the US Chamber, pushed an amendment that would have significantly altered product liability law in Georgia. Over the final days, we negotiated the amendment into language that would have done nothing more than codify current Georgia caselaw. Despite

our negotiations, legislative supporters of ours repeatedly voted to kill the amendment in committee. On the final night of the session, the language was inserted into a conference committee report on a different bill and passed the Senate. But, in the final hour of the session, following some excellent work by many Democratic and Republican supporters of the Civil Justice System in the House, the bill was defeated by a 45-123 vote.

### **Immunity during a Declared State of Emergency**

Desired Result: Reserve immunity for entities not being paid for their 'Good Samaritan' work.

Status: Goal Achieved.

For the past two sessions, the proponents of this bill have worked to immunize corporations responding to a governmental request for assistance in the wake of a declared state of emergency in Georgia. We acquiesced to this effort but have insisted that the entities should only be entitled to 'charitable immunity' if they are not getting paid for their service, i.e., if they are providing charitable emergency services. This proposition passed on the final night of the session and will afford immunity only if an entity neither expects nor receives compensation for its service in the wake of an officially declared emergency.

### **Free Clinic Immunity (SB346)**

Desired Result: Prevent passage.

Status: Goal Achieved.

A number of efforts were made this session to expand the immunity available to medical practitioners providing medical services in designated "free clinics" so that the immunity would apply even if the practitioners were being paid for their services (as long as the patient was not paying, i.e., if their care was paid for by taxpayers or if providers were paid through charitable fundraising). After extensive lobbying of Senate leadership, we were able to keep all such measures held in the Senate.

### **Intervention in Workers' Compensation Claims (HB661)**

Desired Result: Prevent passage.

Status: Goal Achieved.

In 2007, the Speaker Pro Temp of the House introduced a bill that would have given health insurers access to every workers' compensation claim pending before the State Board of Workers' Compensation, thereby giving them the right to intervene in – and the ability to stop the resolution of – every pending workers' compensation claim. Throughout the 2008 session, we worked with the business community to fight off amendment after amendment on this issue. We were successful at every turn and the proposition did not pass.

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### **Personal Immunity for Clerks of Court**

Desired Result: Prevent passage.

Status: Goal Achieved.

Following a trial court's refusal to dismiss a claim for negligence against a clerk of court in her personal capacity, the Superior Court Clerks' Council sought to introduce a bill that would give clerks immunity from any personal liability for their ministerial acts. Following several negotiating sessions, the Clerks' Council decided not to introduce the bill this year. This issue is likely to come back again in the 2009 session.

### **Immunity for Municipalities for failing infrastructure**

Desired Result: Prevent passage.

Status: Goal Achieved.

Following a number of successful cases against the City of Atlanta for harm caused to real property as a result of a failing 100-year-old sewer system, the City of Atlanta sought to introduce a bill that would provide immunity for cities in nuisance cases caused by failed sewer systems and the property damage they have caused. Such immunity would attach if a city could show that it followed engineering standards at the time of installation, regardless of the fact that the city had failed to maintain such sewer systems over the life of the sewer system. Ultimately, the City of Atlanta was persuaded not to introduce this legislation this year.

### **Private Process Servers (SB 41/HB 292)**

Desired Result: Passage.

Status: Goal Not Achieved.

Despite our successfully passing the bill through the House Civil Judiciary Committee this session, the sheriffs' association exerted its considerable political influence to stop this bill from ever getting to the floor of the House, all so they could maintain their exclusive control over the 'service of process turf' in Georgia. This issue may become a priority in the 2009 session.

### **Bar Exam Rules Changes (HB115)**

Desired Result: Prevent passage.

Status: Goal Achieved.

Following efforts by GTLA and the State Bar to help facilitate communications between legislative leadership and the Supreme Court over the rules relating to qualifications for sitting for the Bar exam, the Supreme Court created a study committee to look into these issues. The creation of this committee helped to hold off this legislation.

### **Mortgagees' right to liquidated damages (HB1093)**

Desired Result: Preserve mortgagees' rights.

Status: Goal Achieved.

Following the initiation of litigation (by several GTLA members) to pursue the rights of mortgagees when their bank failed to timely cancel the security deed following the pay off of a mortgage, the Georgia Bankers' Association sought to limit significantly the ability of consumers to obtain the liquidated damages provided for under Georgia law. GTLA turned this legislation on its head and further solidified the rights of mortgagees to be notified of their right to have their security deeds timely cancelled, their right to liquidated damages when the bank fails to follow the law and their right to sue for other damages when this happens. This legislation, amended so as to benefit consumers, passed both chambers of the Legislature and Governor Perdue signed it into law.

### **Civil Filing Fee Add-ons (HB1316 & HB 1462)**

Desired Result: Prevent passage.

Status: Goal Achieved.

Legislators in Dekalb County twice tried to increase civil filing fees in Dekalb State Court so as to fund arguably good ideas having nothing to do with the rights of civil litigants. We successfully fought off both initiatives within the Dekalb delegation only to find one of the measures on the floor of the House through a "Local Consent Calendar." With the help of a number of representatives from both political parties, we were able to defeat the bill, first on its initial vote on a Friday and again on a motion for reconsideration on the following Monday. ■

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## Long-Arm Jurisdiction/ Service of Process on Foreign Corporation

In *Vibratech Inc. v. Frost*, \_\_\_ S.E.2d \_\_\_, No. A07A2078, 2008 WL 796425 (Ga. App. Mar. 27, 2008), the Court of Appeals addressed the scope of Georgia's long-arm personal jurisdiction statute and service of process on a foreign corporation. A pilot and four passengers died in the crash of a Cessna airplane owned by a Georgia entity. The Georgia entity and the five decedents' estates sued multiple defendants, including Vibratech, in Gwinnett County. Plaintiffs alleged that Vibratech negligently manufactured a component part -- a damper designed to reduce engine vibration -- that was installed in the aircraft's left engine.

Vibratech, a Delaware corporation with its principal place of business in New York, filed for bankruptcy some 18 months before the accident, ceased operations, and had no officers, directors or employees. Vibratech was never authorized to conduct business in Georgia and had no business operations in the state. Vibratech sold the damper at issue "FOB Seller's Plant" in Alden, New York, to Teledyne Continental Motors, Inc. (TCM), a Delaware company with its principal place of business in Alabama. TCM installed the damper in a rebuilt Cessna engine. The rebuilt engine was purchased by the Georgia owner of the plane through a third-party, and TCM shipped the engine to L & M Aircraft in Rome, Georgia for installation.

Plaintiffs served CT Corporation, Vibratech's registered agent in Delaware. Although CT had previously notified Vibratech that it was discontinuing service for nonpayment, CT accepted service and forwarded the service documents to the last contact Vibratech had provided. After service, CT formally resigned as Vibratech's registered agent, sending notifications to the Delaware and New York secretaries of state. Vibratech's last contact returned the documents to CT, explaining that Vibratech was in bankruptcy and that it had no contact with Vibratech. CT returned the service papers to the clerk of the trial court, copying plaintiffs' counsel on the transmittal letter stating that its statutory representation services for Vibratech had been discontinued. Although Plaintiffs were aware that Vibratech had filed for bankruptcy, Plaintiffs did not attempt service on the bankruptcy trustee.

Vibratech failed to answer; however, TCM, which had indemnified Vibratech and added it as a named insured to an avia-

tion insurance policy, began to defend Vibratech. Vibratech moved to dismiss asserting, *inter alia*, lack of personal jurisdiction and insufficient service of process. It was unsuccessful, but the trial court permitted an interlocutory appeal.

Vibratech argued that the trial court lacked personal jurisdiction because it never transacted any business in Georgia, in that it had no office, took no orders, made no sales, delivered no products and solicited no business here. The trial court held that Vibratech's placement of its dampers into the stream of commerce by manufacturing, selling and delivering them for resale were sufficient to satisfy the requirements of due process and to confer jurisdiction. Vibratech countered that the long-arm statute requires more than merely putting merchandise into the stream of commerce and that it required the actual transaction of business in Georgia.

The Court of Appeals analysis began with O.C.G.A. § 9-10-91(1), the long-arm statute, which has been held as reaching "to the maximum extent permitted by procedural due process." *Innovative Clinical & Consulting Svcs. v. First Nat'l Bank*, 279 Ga. 672, 675, 620 S.E.2d 352 (2005). Prior caselaw had found personal jurisdiction over out-of-state defendants on a "stream of commerce" theory. The Court of Appeals noted that jurisdiction over TCM existed under this theory. But Vibratech was one step removed from TCM, in that Vibratech had manufactured a component part, shipped it to TCM, which in turn installed the part into an engine and shipped it into Georgia. Noting that under *Innovative Clinical*, direct contacts are not required to establish jurisdiction, the Court of Appeals proceeded with a three-step analysis:

Jurisdiction exists on the basis of transacting business in this state if (1) the nonresident defendant has purposefully done some act or consummated some transaction in this state, (2) if the cause of action arises from or is connected with such act or transaction, and (3) if the exercise of jurisdiction by the courts of this state does not offend traditional fairness and substantial justice.

[Aero Toy Store v. Grieves, 279 Ga. App. 515, 518, 631 S.E.2d 734 \(2006\) \(footnote omitted\).](#)

The first two steps evaluate whether sufficient "minimum contacts" have occurred, and the last considers the reason-